

REMARKS

By this amendment, claims 39-62 are pending, in which claims 1-38 were previously canceled without prejudice or disclaimer; and claims 39, 41, 42, 46, 47, 48, 50, and 61 are currently amended. No new matter is introduced.

The Office Action mailed September 14, 2009 rejected claims 41, 46 and 52 under 35 U.S.C. § 112, first paragraph as failing to comply with the written description requirement, rejected claims 39-48, 50-59, and 61-62 under 35 U.S.C. § 103(a) as being unpatentable over *DeWeese et al.* (US Pub. 2005/0262542 A1) and further in view of *Kim* (US 6,910,186 B2), and rejected claims 49 and 60 35 U.S.C. § 103(a) as being unpatentable over *DeWeese et al.*, further in view of *Kim*, and further in view of *Bickmore et al.* (US 6,466,213 B2).

As for the written description rejection, Applicants maintain that the rejection is improper. It is noted that the examiner has the initial burden of presenting by “a preponderance of evidence” why a person skilled in the art would not recognize in an applicant’s disclosure a description of the invention defined by the claims (see MPEP §§ 2163.02 and 2163.04). The burden of proof cannot be satisfied by the Examiner’s mere subjective dissatisfaction with the level of detail of the claimed features. Here, the Office Action merely concludes, “There is no support for this claim in the instant application,” without any factual evidence, much less a “preponderance of evidence.”

Moreover, with respect to § 112 rejection of claims 41 and 52, Applicants respectfully submitted that a skilled artisan would have understood the inventor to be in possession of the claimed invention at the time of filing, based on, e.g., paragraphs [0034] and [0035] of the specification. See MPEP §2163 II(A)(3)(a): “If a skilled artisan would have understood the inventor to be in possession of the claimed invention at the time of filing, even if every nuance of

the claims is not explicitly described in the specification, then the adequate description requirement is met.”

With respect to § 112 rejection of claim 46, Applicants have amended the claim by replacing “downloading” with “receiving.” The recited features are fully described in paragraphs [0027] and [0028] of the specification. Therefore, the rejection has been rendered moot.

As for the rejection under § 103(a), Applicants have amended independent claims 39, 50 and 61 to reduce issues for potential appeal. As amended claim 39 recites, among other features, “determining a theme of the displayed television programming **based on retrieved television programming guides associated with the displayed television programming; automatically selecting** a background image **based on said theme**,” claim 50 recites, among other features, “determine a theme of the displayed television programming **based on retrieved television programming guides associated with the displayed television programming; automatically select** a background image **based on said theme**,” and claim 61 recites, among other features, “determining a theme of the displayed television programming **based on retrieved television programming guides associated with the displayed television programming; automatically selecting** a background image **based on said theme**.” These amendments are fully supported, for example, by paragraph [0029] of the specification.

With respect to the features of “selecting a background image based on said theme,” the Office Action states that “DeWeese discloses television chat, but it does not specifically disclose a background image. However, *Kim* discloses a chatroom with a background that is related to a product or service col. 5 lines 62-67 – col. 6 lines 1-22” (*See*, page 5 line17 – page 6 line2). The cited portion of *Kim* merely teaches that “an organization may set up a chatroom (also called

‘organizational chatroom’) with a background that is related to (e.g. has the same trade dress as) its product or service, and use an organizational avatar as the host of the organizational chatroom” (*See*, col. 5 lines 62-66). In other words, *Kim* only discloses, in generalities, that an organization which sets up a chatroom can decide the background. In contrast, independent claims recites that background is automatically selected **based on the theme**, which is **determined based on retrieved television programming guides associated with the displayed television programming**. Therefore, the art fails to disclose the recited feature, “**automatically selecting a background image based on said theme.**”

The above deficiencies are not cured by *Bickmore et al.*, which is disclosed for a supposed teaching of a GIF image.

Accordingly, Applicants submit that the applied references either when taken singularly or in combination, fail to disclose or suggest all of the limitations recited in independent claims 39, 50, and 61.

The dependent claims are considered allowable for the reason advanced for independent claims for which they respectively depend.

Therefore, the present application, as amended, overcomes the objections and rejections of record and is in condition for allowance. Favorable consideration is respectfully requested. If any unresolved issues remain, it is respectfully requested that the Examiner telephone the undersigned attorney at (703) 519-9952 so that such issues may be resolved as expeditiously as possible.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 504213 and please credit any excess fees to such deposit account.

Respectfully Submitted,

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Date

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